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**Candace Havens**  
Director

**M E M O R A N D U M**

TO: LAND USE COMMITTEE OF THE BOARD OF ALDERMEN

FROM: CANDACE HAVENS, DIRECTOR OF PLANNING AND DEVELOPMENT  
EVE TAPPER, CHIEF PLANNER FOR CURRENT PLANNING <sup>ET</sup>  
ALEXANDRA ANANTH, SENIOR PLANNER

RE: INFORMATION FOR OCTOBER 4, 2011 WORKING SESSION

DATE: SEPTEMBER 30, 2011

CC: PETITIONERS  
JOHN LOJEK, COMMISSIONER OF INSPECTIONAL SERVICES

In response to questions raised at the Land Use Committee public hearings, previous working session meetings and/or staff technical reviews, the Planning Department is providing the following information for the upcoming working session. This information is supplemental to staff analysis previously provided at the public hearing.

PETITION #211-11 543-545 COMMONWEALTH AVENUE  
REQUEST TO REPLACE ONE NONCONFORMING USE WITH ANOTHER

- **Hours of Operation.** In order to address concerns raised at the public hearing the petitioner has agreed to reduce the proposed hours of operation by one hour. Proposed hours are now Monday through Saturday from 9 a.m. to 10 p.m. and Sunday 12 p.m. to 8 p.m. The petitioner has noted that the proposed 10pm closing coincides with the closing time of the pizza store in the same building.
- **Trash and Recycling.** All trash will be collected by private companies, with two separate pickups; one pickup for trash and one pickup for recyclables. The petitioner is proposing a dedicated roll-out dumpster for trash only to be located in the fenced alley behind the building, alongside other dumpsters of existing tenants. No pickups will not occur before 7 a.m.



All Recyclables will be picked up together. Cardboard boxes will be broken down, tied, and stored in the basement until weekly removal. Empty bottles for recycling will also be stored in the basement until weekly removal.

- **Window facing Irving Street.** The petitioner has agreed to replace the boarded windows with brick as soon as is feasible, but no later than the issuance of a Certificate of Occupancy for the proposed liquor store.
- **Employee Parking.** The petitioner has agreed to instruct employees to park across the street on Commonwealth Avenue in front of the Newton Squash and Tennis Club where on-street parking is typically unused and is not in front of residences.
- **Beautification.** The petitioner has agreed to install and maintain two planters or flower boxes immediately in front of his facade.
- **Restrictions on Permit.** In response to the Committee's concerns about the future use of the package store liquor license, the petitioner has agreed to include a condition in the special permit that at least 80% of the shelf space shall be dedicated to the sale of gourmet foods, fine wine, and craft beer.

The Inspectional Services Department will have the right to inspect the premises during business hours to ensure continued compliance and this restriction will run with the special permit and the land and therefore be applicable to future owners of any similar such use.

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**RECOMMENDATION:** Approval with the findings and conditions listed in the attached draft Board Order (**ATTACHMENT A**).

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**ATTACHMENT A:** Draft Board Order, 543-545 Commonwealth Avenue

DRAFT  
#211-11

CITY OF NEWTON  
IN BOARD OF ALDERMEN

October 17, 2011

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of this SPECIAL PERMIT for replacement of one nonconforming use by another nonconforming use as recommended by the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Ted Hess-Mahan:

1. The proposed nonconforming use of a gourmet food and liquor store would not be substantially more detrimental to the neighborhood than the previous nonconforming use as the proposed use has an identical parking requirement as the previous use and hours of operation are similar to existing uses in the commercial building.
2. The site is an appropriate location for such use as the commercial building already exists and includes a mix of complementary tenants.
3. The use as developed and operated will not adversely affect the neighborhood as all deliveries and trash and recycling collection will be managed during normal business hours and not before 7 a.m.

PETITION NUMBER: #211-11

PETITIONER: Eastern Beverage Group/EMK Newton Centre Realty, LLC

LOCATION: 543-545 Commonwealth Avenue, Section 73, Block 45, Lot 19  
containing approximately 5,585 sq. ft. of land

OWNER: EMK Newton Centre Realty, LLC

ADDRESS OF OWNER: EMK Newton Centre Realty, LLC  
c/o Rosenberg Freedman & Goldstein LLP  
246 Walnut Street,  
Newtonville, MA 02160

TO BE USED FOR: Gourmet food and liquor store

CONSTRUCTION: No exterior structural changes, interior renovations only

EXPLANATORY NOTE: §30-21(b) for the change of one nonconforming use to another;  
§30-24(d) for approval of Special Permit

ZONING: Multiple Residence 1 District

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plans entitled:
2. To be inserted
3. The proposed tenant shall keep the rear door to the facility shut in order to prevent any noise from disturbing residential abutters.
4. Any changes to signage shall be subject to review and approval by the Urban Design Commission and the Director of Planning and Development.
5. Hours of operation shall be no later than 10 p.m. Monday through Saturday and 8 p.m. on Sundays.
6. Trash will be kept in a closed roll-out dumpster to be located in the fenced back alley of the building. All fencing and dumpsters relating to the subject property will be maintained, and kept closed by the petitioner so that they are clean and the area is free of debris and odors. All recyclables shall be stored in the basement until their weekly collection. No trash shall be collected before 7 a.m.
7. Employees shall park across the street on Commonwealth Avenue in front of the Newton Squash and Tennis Club where on-street parking spaces are typically unused and not in front of residences.
8. The petitioner shall install and maintain two planters or window boxes immediately in front of their façade.
9. The petitioner shall dedicate at least 80% of its shelf space for the sale of gourmet foods, finer wine, and craft beer.
10. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:

- a. recorded a certified copy of this board order for a special permit/site plan approval with the Registry of Deeds for the Southern District of Middlesex County.
  - b. filed a certified copy of such recorded notices with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.
  - c. submitted plans to the Director of the Planning and Development Department for review for consistency with plans listed in Condition #1.
11. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
- a. filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final site features including signage.
  - b. bricked up the boarded windows facing Irving Street.